

Remarks

Claims 1, 2 and 7 – 19 and 49 – 58 are pending. No claims are added, cancelled or amended

II. Rejections under Section 102

Claims 1, 2, 7-10, and 16-18 stand rejected under 35 U.S.C. 102(b) as being anticipated by Carson (U.S. 5,931,862). This rejection is respectfully traversed.

The claims expressly require a system comprising a pacing pulse generator and first and second leads. The Carson reference does not show such a system. The Carson reference shows a system comprising a pacing pulse generator and a single lead. It is described in Carson as a lead or the lead. This usage is consistent with common usage in the art and the usage in both the present application and Carson. Anyone of skill in the art would understand the system described Carson and illustrated in Figure 1 to be a single lead system. Even the Official Action acknowledges that the system in Carson employs “a medical electrical lead” and reads all relevant claim limitations on this same lead. Calling the single lead system of Carson a two lead system does not make it one.

While the Examiner can adopt reasonable interpretations of the claim limitations, interpreting the terms of the claims contrary to common usage in the relevant art and contrary to the usage of the terms in the application is per se unreasonable. The lead illustrated in Carson, as understood in the art, is a single lead provided with a bifurcated connector assembly. It is not two leads as expressly required by the claims. If necessary in conjunction with filing of an appeal, applicants will provide a list of patents and articles describing such leads and none will refer to them or describe them as two leads. If the Examiner can find a single reference in which a lead with a bifurcated connector as disclosed in

Carson is referred to as being two leads, Applicants will withdraw this argument. Otherwise, if the rejection is maintained on this basis, it will be appealed.

In apparent acknowledgement of the problems with the original argument for anticipation, the Examiner has now also cited the text at column 3, lines 44 – 55 as disclosing a second lead. So it does, but the lead disclosed is not described as being connectable to the pulse generator of Carson in the manner required by the claims. In fact, no particulars of the interconnection of this second or alternative lead and the pulse generator of Carson are disclosed, other than that which would result from its direct substitution for the lead of Carson. The result of such a substitution is still a single lead system. No mention is made of delivering pulses between electrodes on both the Carson lead and the additional lead. The cited text in column 3 thus cannot turn Carson into an anticipatory reference under Section 102.

It is respectfully asserted that under the law, Applicants are entitled to either a proper rejection or a patent. Withdrawal of the rejection of claims 1, 2, 7-10, and 16-18 under 35 U.S.C. 102(b) as being anticipated by Carson is respectfully asserted to be necessary regardless of the ultimate results of the examination.

Claims 1, 2, 7-10, 11 and 16 stand rejected under 35 U.S.C. 102(e) as being anticipated by Krall (WO 02/089909 A1). This rejection is also respectfully traversed.

The claims, as discussed above, clearly require a system comprising a pacing pulse generator and first and second leads. The Krall reference shows a system comprising a pacing pulse generator and a single lead with a bifurcated connector. For exactly the same reasons as discussed above in conjunction with the Carson patent, such a structure cannot be reasonably argued to anticipate the invention as claimed.

Withdrawal of the rejection of claims 1, 2, 7-10, 11 and 16 under 35 U.S.C. 102(b) as being anticipated by Krall is respectfully requested. As with the

rejection over Carson, the Examiner now cites the text at page 1, lines 11 – 20 for its disclosure of a second lead. This text is a general discussion of prior art leads generally. It is not part of the description of the Krall system and offers no relevant teaching as to how a second lead might be connected in conjunction with the Krall lead.

For the same reasons as discussed in conjunction with the rejection over Carson, withdrawal of the rejection under Section 102 of claims 1, 2, 7-10, 11 and 16 is respectfully requested.

Claims 1, 2 and 16-19 stand rejected under 35 U.S.C. 102(e) anticipated by Belden (U.S. 6,847,845). This rejection is also respectfully traversed.

First, it is worth noting that the Examiner correctly refers to the lead 200 on which the anticipation rejection is based as being “a lead”, consistent with conventional word usage in the art. This lead, like the leads of Carson and Krall, discussed above, has a bifurcated connector but is still a single lead. Nonetheless, the Examiner still reads the required first and second electrodes as both being present on this lead, contrary to the requirements of the claims. The rejection under Section 102 is respectfully asserted to be clearly erroneous for this reason.

The Attorney for Applicants misunderstood the Examiners anticipation argument as previously presented. The attorney for Applicants apologizes for this misunderstanding. The argument as originally set forth in the Final Action referred to the lumen 32 as being the required porous coating. The attorney for Applicants erroneously responded to only this argument.

The Advisory Action clarifies this point. The attorney for Applicants now understands the Examiner did not intend to refer to element 32 or to the lead body generally, but only to jacket 30 (Figure 1). However, even with this clarification, the cited electrodes 12 and 16 are unquestionably located on the same lead, contrary to the claims.

Withdrawal of the rejection of claims 1, 2 and 16-19 as anticipated by Belden is thus respectfully requested for precisely the same reasons as discussed above in conjunction with the Carson and Krall patents.

The Advisory Action does now note that a second lead is disclosed in Belden. So it is. However, as in Krall and Carson, the required interconnection of electrodes on the two leads with a pacing pulse generator is not disclosed. Moreover, the rejection still expressly relies only upon the electrodes on lead 200.

Again, withdrawal of the rejection of claims 1, 2 and 16-19 is respectfully requested for precisely the same reasons as discussed above in conjunction with the Carson and Krall patents.

III. Rejections under Section 103

All rejections made under Section 103 are based upon the defective rejections under section 102 as discussed above and are believed improper for the reasons discussed above. The additional references cited in the rejections under Section 103 do not make up for the deficiencies in the rejections under Section 102 and are not cited as doing so.

Withdrawal of all rejections under Section 103 is respectfully requested.

Conclusion

Applicants respectfully assert that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

The remarks presented herein are believed fully responsive to the Office Action and are believed sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the

pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Finally, please grant any extension of time, if necessary for entry of this paper, and charge any fee due for such extension or any other fee required in connection with this paper to Deposit Account No. 13-2546.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

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Date

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